Jan 7 / 872
Dismissed for dep

10 Wall 421

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~296.~~ 98

WILLIAM W. PUGH, PLAINTIFF IN ERROR,

vs.

JAMES L. McCORMICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Writ of Error

FILED NOVEMBER 17, 1870.

Feb 10 / 872
dismissed
per Chief Justice

SUPREME COURT OF THE UNITED STATES.

No. 296.

WILLIAM W. PUGH, PLAINTIFF IN ERROR,

vs.

JAMES L. McCORMICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	1
Note	4	2
Receipt	4	2
Protest waived	4	2
Notice of receipt	5	2
United States internal revenue collector's certificate	5	2
Citation	5	3
Sheriff's return	6	3
Citation summons	7	3
Sheriff's return	8	4
Answer	8	4
Opening of the court	10	5
Opening of the court	10	5
Fixed for trial	10	5
Adjournment	10	5
Opening of the court	10	5
Evidence for plaintiff	11	5
defendant	11	5
Exceptions	12	6
Judgment	15	7
Motion for appeal	16	7
Petition for appeal bond	16	8
Order of court	17	8
Bond	18	8
Certificate of the clerk (fourth judicial district court)	19	9
Extract from docket supreme court	20	9
the minutes	20	9
the minutes	21	9
the minutes	21	10
docket	22	10

	Original.	Print.
Extract from the minutes	22	10
the minutes	22	10
Opinion and decree	23	11
Petition for rehearing	25	12
Letter annexed to petition	30	13
Rehearing refused	31	14
Petition for writ of error	31	14
Writ of error (order)	34	15
Citation	35	15
Bond	36	16
Citation for service	38	16
Sheriff's return	40	17
Certificate of the deputy clerk	42	18
chief justice	43	18
clerk legalizing, &c.	44	19

The State of Louisiana, fourth judicial district court, parish of Assumption.

Transcript of appeal.

IN THE MATTER OF JAMES L. McCORMICK
vs.
WILLIAM W. PUGH. } No. 1686.

Petition.

JAMES L. McCORMICK
vs.
W'M W. PUGH. } No. 1686.—Petition.

To the hon. the judge of the fourth judicial district court, in and for the parish of Assumption, La.:

The petition of James L. McCormick, a resident of the parish of Ascension, respectfully represents: That W'm W. Pugh, whose domicil is in the parish of Assumption, in this State, is justly and truly indebted unto petitioner in the full sum of two thousand five hundred and
2 thirty-four dollars and thirty-five cents, ($2,534 35,) with eight per cent. per annum interest thereon from the 17th of May, 1864, and cost of suit, for the reasons hereinafter set forth, to wit:

That petitioner is the holder and owner, in good faith and for value, of a certain promissory note for seven thousand dollars, drawn by R. C. Martin, under date of Assumption, La., 12th April, 1863, to the order of W'm W. Pugh, by the said W'm W. Pugh, endorsed in blank, and payable twelve months' after date, at the counting-house of Foley, Avery & Co., in New Orleans, with interest thereon from the date thereof, at eight per cent. per annum, until final payment; that said note is subject to a credit of two partial payments made thereon—one of two thousand dollars, under date of the 7th of December, 1863, and one of three thousand dollars, dated 17th of May, 1864; that after attributing the said two sums in the order in which they were respectively received, to the payment of accrued interest, and to the extinguishment pro
3 tanto of the principal amount, there remains a balance due on said note of two thousand five hundred and forty-four dollars and thirty-five cents, with eight per cent. interest thereon per annum, from the seventeenth of May, 1864.

Your petitioner would further represent that, on the 16th of October, 1865, the said W'm W. Pugh, as payer and endorser of said note, expressly waived protest, notice of protest, and demand of payment thereof, and furthermore expressly assumed all legal responsibilities resulting from his endorsement thereon; all of which fully appears, by reference to said note, hereto annexed, as part of this petition. And petitioner avers further, that the said W'm W. Pugh neglects and refuses to pay said amount to petitioner though often amicably sought thereto.

Wherefore the petitioner prays that the said W'm W. Pugh may be duly cited to answer hereto; that, after due proceedings, peti-
4 tioner have judgment against said Pugh, and that he be condemned to pay petitioner the sum of two thousand five hundred and forty-four dollars and thirty-five cents, with eight per cent. per annum interest thereon from the 17th of May, 1864, and costs of suit. Petitioner prays for legal and equitable relief.

(Original signed) R. S. SIMS,
Att'y for Pl'ff.

Filed March 25th, 1868.
(Original signed) WALTER GUION, *D'y Clerk.*

Note.

Debts, $7,000. ASSUMPTION, LA., 12 *April*, 1863.

Twelve months after date, I promise to pay to the order of W'm W. Pugh, at the counting-house of Foley & Avery & Co., in New Orleans, seven thousand dollars, with eight per cent. interest thereon, from the date hereof, for value received.

(Original signed) R. C. MARTIN.

(Endorsed:) W'M W. PUGH.

Receipt.

DECEMBER 7TH, 1863.

Received of W'm W. Pugh for account of the within note, the sum of two thousand dollars, ($2,000 00.)

Protest waived.

Notice of protest, demand, and protest waived, and all legal responsibilities assumed.

Assumption, October 16th, 1865.

(Original signed) W'M W. PUGH.

5 *Notice of receipt.*

Transferred to my credit at P. H. Foley's office on the 17th of May, 1864, three thousand dollars, ($3,000 00.)

(Original signed) J. L. McCORMICK.

I. R. stamp.

Internal revenue stamps to the amount of $3 50 affixed and cancelled. J. S. C. October 7th, 1869.

U. S. I. R. collector's certificate.

Internal revenue stamps to the amount of three dollars and fifty cents affixed to this instrument and cancelled, by me, at the request of James McCormick, esq., this 7th day of October, 1869. Penalty remitted, interest collected.

Collector's office, Baton Rouge, La., Oct. 7th, 1869.

(Original signed) JOHN S. CHAPMAN,
Collector 2nd District, La.

[John S. Chapman, collector U. States internal revenue, 2nd district, La.]

Filed 16th June, 1868. (Original filed.)
ALFRED TÊTE, *Clerk.*

Citation & summons.

JAMES L. McCORMICK } No. 1686.
vs.
W'M W. PUGH. }

The State of La., fourth judicial district court, parish of Assumption.

To W'm W. Pugh, of the parish of Assumption, La.:

You are hereby summoned to comply with the prayer of the
6 accompanying petition or to file your answer thereto in writing with the clerk of the fourth judicial district court of the State of Louisiana, in and for the parish of Assumption, at his office in the village of Napoléonville, in said parish, in ten days after the service thereof, allowing you one day additional for every ten miles your residence is distant from the place of holding said court, and if you fail herein, judgment by default will be rendered against you.

Witness the Hon. Raphael Beauvais, judge of the fourth judicial district, parish of Assumption, this the 25th day of March, in the year of our Lord 1868.

(Original signed) ALFRED TETE,
Clerk of the 4th Judicial District Court.

Citation.—Sheriff's return.

Fourth judicial district court, parish of Assumption.

JAMES L. McCORMICK } No. 1686. Sheriff's return.
vs.
W'M W. PUGH. }

Received the within citation and a copy thereof, with a copy of petition accompanying the same, on the date hereon endorsed, (25th
7 March, 1868,) and on the 27th day of the same month and year executed the same by serving the copies aforesaid in the hands of W'm W. Pugh, in person, in the parish of Assumption, he being personally known to me; whereof I make this my true return.

Sheriff's office, parish of Assumption, March 27th, 1868.

(Original signed) AUBIN BOURG, *D'y Sh'ff.*

Citation summons.

The State of La., fourth judicial district court, parish of Assumption.

JAMES L. McCORMICK } No. 1686.
vs.
W'M W. PUGH. }

To W'm W. Pugh, of the parish of Assumption, La.:

You are hereby summoned to comply with the prayer of the accompanying petition, or to file your answer thereto in writing, with the clerk of the 4th judicial district court of the State of Louisiana in and for the parish of Assumption, at his office in the village of Napoleonville, in said parish, in ten days after the service hereof, allowing you one day additional for every ten miles your residence is distant from the

place of holding said court; and if you fail herein, judgment by
8 default will be rendered against you.

Witness the Hon. Raphael Beauvais, judge of the fourth judicial district, parish of Assumption, this 27th day of July, in the year of our Lord 1869.

(Original signed) H. DE BROSSARD,
Dep'y Clerk of the 4 Judicial District Court.

Citation.—Sheriff's return.

4 jud. district court, parish of Assumption.

J. L. McCORMICK
vs.
W'M W. PUGH. } No. 1686. Sheriff's return.

Received the within citation, with a copy of the same, and petition, on the 27th day of July, 1869, and on the 28th instant of the same month and year executed the same by leaving said copy and petition in the hands of said W'm W. Pugh, in person, he being personally known to me. Whereof I make this my true return.

Sheriff's office, July 28th, 1869.

(Original signed) J. W. SWORDS, *Sheriff.*

Filed July 28th, 1869.

(Original signed) H. DE BROSSARD,
Dep'y Clerk.

Answer.

Fourth judicial district court of the State of La. in and for the parish of Assumption.

IN THE MATTER OF JAMES L. McCORMICK
vs.
W'M W. PUGH. } No. 1686. Answer.

9 Into court, through the undersigned, his counsel, comes the defendant, W'm W. Pugh, and for answer to plaintiff's petition denies all and singular its allegations, save such as may be admitted. Respondent particularly denies that the plaintiff acquired the instrument upon (which) he founds this action from respondent; he avers, on the contrary, that the said plaintiff obtained the same direct from Robert C. Martin, who signed the same. Respondent further denies that any consideration ever passed between respondent and said McCormick (plaintiff) in regard to said instrument, or between respondent and Robert C. Martin, in regard to the same. He denies that he was ever legally bound upon said instrument, or that he has ever, at any time, rendered himself liable upon the same. Wherefore, averring the demand of the plaintiff to be neither just nor true founded, he prays that it be rejected at plaintiff's costs; and he further prays for all and general relief.

(Original signed) NICHOLS, LE BLANC AND FOLSE,
10 *Att'ys of Respondent.*

Filed January 11th, 1870.

(Original signed) JOHN K. DUENO, *Clerk.*

Opening the court.

Fourth judicial district court, parish of Assumption, State of Louisiana.

Pursuant to an order emanating from the Hon. Raphael Beauvais, judge of this court, and published according to law in the official journal, court was convened on Monday, Jan'y 10th, 1870.
Present, Hon. R. Beauvais, judge; John K. Dueno, clerk.
Court adjourned until to-morrow, at 10 o'clock a. m.

Opening of the court.

TUESDAY, *January 11th*, 1870.

Court met pursuant to adjournment.
Present, Hon. R. Beauvais, judge; Jno. K. Dueno, clerk.

Fixed for trial.

J. L. McCORMICK
vs.
W'M W. PUGH. } No. 1686.

On motion of R. S. Sims, of counsel for plaintiff, this case was fixed for to-morrow, 12th instant.

Adjournment of the court.

Court adjourned until to-morrow, at 10 o'clock a. m.

Opening of the court.

WEDNESDAY, *January 12th*, 1870.

Court met pursuant to adjournment.
11 Present, Hon. Raphael Beauvais, judge; John K. Dueno, clerk.

Fourth jud. dist. court, parish of Assumption, State of La.

J. L. McCORMICK
vs.
W'M W. PUGH. } No. 1686.—Evidence adduced by plaintiff.

Evidence for plaintiff.

List of the evidence adduced by plaintiff. 1st note sued on, marked A, and endorsements thereon, and waiver of protest. Evidence for plaintiff closed.

Evidence for defendant.

Evidence of defendant:

1st. W'M W. PUGH, sworn, says that when he placed his signature to the endorsement to the instrument it was in the hands of R. C. Martin, and was handed back by him to R. C. Martin. There was no valuable consideration which passed between R. C. Martin and W. W. Pugh

with regard to said note, and none between W'm W. Pugh and James L. McCormick.

Evidence for defendant closed.

Cross-examination of W'm W. Pugh:

Witness endorsed the note for the accommodation of R. C. Martin.

(Original signed) JOHN K. DUENO, *Clerk.*

Filed January 12th, 1870.

(Original signed) JOHN K. DUENO, *Clerk.*

12 *Exceptions.*

Fourth judicial district court of the State of Louisiana in and for the parish of Assumption.

JAMES L. MCCORMICK *vs.* W'M W. PUGH. } No. 1686.—Bill of exceptions.

In the matter of James L. McCormick vs. (No. 1686) W'm W. Pugh, be it known and remembered that upon the trial of this cause plaintiff offered to introduce a certain instrument, (marked "A," for the purpose of identifying the same with this bill of exceptions,) to which defendant counsel objected that the same was not admissable—1st, because the face of the instrument was not legally stamped with the internal revenue stamps of the United States, as required by law; that if it was stamped at all, it was not legally stamped, as no stamps could be affixed to it, except in the time and in the manner and for the amount and by the person authorized by law, which was not the case. He further objected to the introduction of the endorsement of the defendant to the instrument, because said endorsement was not

13 *was not* stamped at the time of placing it here, nor at any time since, which he contends should have been done. He further objected to any endorsement showing a waiver of demand, protest, and notice of protest, because said waiver was not, and has never been, stamped with the internal revenue stamps of the United States, which has never been done; which he contends should have been done, and until done legally, could not be offered in evidence.

These objections of the defendant, being overruled by the court, the defendant stated to the court that he reserved his bill of exceptions to said ruling as being prejudicial to him; and he, therefore, does now except to said ruling of the court, which were predicated by the court, upon the following grounds declared by him, to wit: The instrument was stamped by John B. Chapman, collector of the 2nd district, on October 7th, 1869, as appears by the instrument, stamps being affixed by him to the extent of three dollars and fifty cents, and cancelled—

14 penalty remitted and interest collected. This the court declared was done in the manner, at the time, for the amount and by the person required by law, and regular. The court was of the opinion that no stamps were required to the endorsement of W'm W. Pugh, and none were required to the waiver. Plaintiff then offered to introduce the note and endorsements, to which defendant objected, on the ground that they could not (be) introduced without proof. This objection the court overruled, on the ground that the pleadings did not require it, to which ruling of the court defendant excepted, and rescind his

bill of exceptions to the same; and he does now except to all of the above ruling of the court, and tenders this his bill of exceptions, which have been examined by the attorney of plaintiff by him, and by him found correct, and then tendered to the judge for his signature. All this in open court, at the parish of Assumption, this 12th January, 1870.

(Original signed) R. BEAUVAIS,
Judge 4th Jud. District.

Filed January 12th, 1870.
(Original signed) JOHN K. DUENO, *Clerk.*

15 *Judgment.*

Fourth judicial district, parish of Assumption. Judgment for plaintiff.

JAMES L. MCCORMICK
vs.
W'M W. PUGH. } No. 1686.—Judgment.

This case having been regularly assigned and fixed for trial, was accordingly taken up pursuant to assignment. The law and the evidence being in favor of plaintiff, James L. McCormick, and against the defendant, W'm W. Pugh, it is therefore ordered, adjudged, and agreed, that judgment be and *he* is hereby rendered in favor of said James L. McCormick, against said W'm W. Pugh, for the sum of two thousand five hundred and forty-four dollars and thirty-five cents, with eight per cent per annum interest thereon from the 17th of May, 1854, and the costs of this suit.

Thus rendered, read, and signed in open court this 12th day of January, 1870.

(Original signed) R. BEAUVAIS,
Judge 4th Judicial District Court.

Filed January 12th, 1870.
(Original signed) JOHN K. DUENO, *Clerk.*

16 *Motion for appeal.*

Motion made by Nicholls, LeBlanc and Folse, counsel for defendant, for appeal.

JAMES L. MCCORMICK
vs.
W'M W. PUGH. } No. 1686.

Appeal granted.

On motion of Nicholls, LeBlanc & Folse, in open court, it is ordered that the defendant, W'm W. Pugh be, and he is hereby, allowed to appeal from the judgment in this case, either by a suspensive or devolutive appeal at his option, on condition in the event of his taking a suspensive appeal, that he furnish bond and security as required by law, and in case of devolutive appeal in the sum of $200, said appeal returnable to the supreme court, New Orleans, on the 4th Monday of January, 1870.

Court adjourned.

Petition for appeal bond.

Fourth judicial district court of the State of La. in and for the parish of Assumption.

JAMES L. McCORMICK
vs.
W'M W. PUGH. } No. 1686.—Petition for appeal.

In the matter of No. 1686, James L. McCormick vs. W'm W. Pugh.

Into this hon. court through the undersigned, his counsel, comes
17 the defendant, W'm W. Pugh, and alleging that the final judgment rendered by this hon. court in the above suit on the 12th of January, 1870, in favor of plaintiff therein, against the defendant, is contrary to law & evidence, moves this court for a suspensive appeal to the supreme court of this State, from said judgment returnable according to law; and that the court fix the return-day, and fix the amount of bond to be furnished in the that said appeal should be taken as a devolutive appeal; reserving the right to make a devolutive appeal if he prefer, and asking for an alternative order of appeal from the court to that effect.

(Original signed) NICHOLLS, LEBLANC & FOLSE,
Att'ys of Defendant.

Order of court.

On reading the above motion, by reason of the law being in favor of the demand therein, it is ordered and decreed that the defendant, W'm W. Pugh be, and he is hereby, authorized and allowed an appeal from the final judgment rendered in the matter of James L. McCormick vs. (No. 1686) William W. Pugh, said appeal to be either suspensive or devolutive appeal as the defendant may elect, said appeal returnable to the supreme court of Louisiana, at New Orleans, on the fourth
18 Monday of January, 1870. Said order of appeal being conditioned upon defendant's furnishing bond with security in the amount fixed by law in case of a suspensive appeal, and in the amount of two hundred dollars in the appeal be devolutive.

This done in open court at the parish of Assumption, on this the 12th January, 1870.

(Original signed) R. BEAUVAIS,
Judge 4th Jud. District.

Filed January, 12th, 1870.
(Signed) JOHN K DUENO, *Clerk.*

Bond.

THE STATE OF LOUISIANA:

Know all men by these presents that we, William W. Pugh, as principal, and Francis T. Nicholls, as security, are held and firmly bound unto John K. Dueno, clerk of the fourth judicial district court, his executors, administrators, and assigns, in the sum of two hundred dollars, ($200 00,) for the payment whereof we bind ourselves, our heirs, administrators, and executors, firmly by these presents, sealed with our

seals, and dated in the town of Napoleonville, on this the 12th day of January, in the year of our Lord one thousand eight hundred and seventy.

19 Whereas the above-bounded William W. Pugh has this day filed a petition of appeal from a final judgment rendered against him in the suit of Ja's L. McCormick vs. W. W. Pugh in the 4th judicial district court on the 12th day of January, 1870.

Now the condition of the above obligation is such, that the above-bound W. W. Pugh shall prosecute said appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said W. W. Pugh and surety shall be liable in his place.

(Original signed) W'M W. PUGH. [L. S.]
(Original signed) FRANCIS T. NICHOLLS. [L. S.]

[A 50-cts. U. S. I. R. stamp attached and duly cancelled.]

Certificate.

I, John K. Dueno, clerk of the 4th judicial district court of the parish of Assumption, do hereby certify the foregoing to be a full and correct transcript of all the proceedings had, as well as all the documents

20 filed in the suit of James L. McCormick vs. W. W. Pugh, and I do hereby further certify that it contains all the evidence or testimony adduced by the parties on the trial of this cause.

In testimony whereof I have hereunto set my hand and the seal of our said court, in the parish of Assumption, in the town of Napoleonville, this twenty-second day of January, A. D. 1870.

[SEAL.] JOHN K. DUENO,
Clerk 4th Jud. District Court, Parish of Assumption.

Supreme court of the State of Louisiana.

Extract from docket.

THURSDAY, *January 27th*, 1870.

Filing record from the 4th jud. district court, parish of Assumption, No. 1686. Docketing.

Called and fixed for January 28th, 1870.

Extract from the minutes.

SUPREME COURT OF LA.,
Friday, January 28th, 1870.

The court was duly opened. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G.

21 Wyly, W'm W. Howe, associate justices.

JAMES L. MCCORMICK
vs.
W'M W. PUGH. } No. 2611.

This case was ordered by the court to be continued with preference.

Extract from the minutes.

SUPREME COURT OF LA.,
Monday, January 31st, 1870.

The court was duly opened, pursuant to adjournment. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, W'm W. Howe, associate justices.

JAMES L. McCORMICK
vs.
W'M W. PUGH. } No. 2611.

This case was ordered by the court to be continued with preference.

Extract from the minutes.

SUPREME COURT OF LA.,
Tuesday, February 1st, 1870.

The court was duly opened, pursuant to adjournment. Present, their honors Jno. T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, W. W. Howe, associate justices.

22 JAMES L. McCORMICK
vs.
W'M W. PUGH. } No. 2611.

This case was ordered by the court to be continued with preference.

Extract from docket.

SUPREME COURT OF LA.,
Wednesday, February 2nd, 1870.

Filing briefs for defendant and appellant. Filing briefs for plaintiff and appellee.

Extract from the minutes.—Motion to submit.

SUPREME COURT OF LA.,
Wednesday, February 2nd, 1870.

The court was duly opened, pursuant to adjournment. Present, their honors Jno. T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, W. W. Howe, associate justices.

JAMES L. McCORMICK
vs.
W'M W. PUGH. } No. 2611.

On motion of F. T. Nicholls, esq'r., of counsel for defendant and appellant, and on suggesting to the court consent thereto of counsel for plaintiff and appellee, this case, fixed for trial for this day, was taken under advisement by the court upon the briefs now on file for both parties.

Extract from the minutes.—Judgment.

SUPREME COURT OF LA.,
Monday, February 14th, 1870.

23 The court was duly opened pursuant to adjournment. Present, their honors Jno. T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, W. W. Howe, associate justices.

On appeal from the 4th jud. district, parish of Assumption.

JAMES L. MCCORMICK
vs.
W'M W. PUGH. } No. 2611.

It is ordered, adjudged, and decreed, that the judgment of the district court be affirmed, with costs in both courts.

Opinion & decree.

Supreme court of La. Appeal from the 4th jud. district, parish of Assumption.

JAMES L. MCCORMICK
vs.
W'M W. PUGH. } No. 2611.

Filed February 14th, 1870.
(Signed) M. P. JULIAN,
Dep'y Clerk.

MR. JUSTICE TALIAFERRO:

The defendant in this case, is sued as endorser of a promissory note for a balance due upon it of $2,534 35 with interest. The defence is want of consideration, and that the defendant never was legally bound
24 to pay the note. Judgment was rendered in favor of the plaintiff, and the defendant appeals. The grounds of defence are set out specifically in a bill of exceptions taken to the admission in evidence of the note sued upon. These are that the face of the instrument was not legally stamped with the internal revenue stamps of the United States as required by law; that, if stamped at all, the stamps were not placed upon it at the proper time, nor by the proper person; that no stamps were placed on it for the endorsement of W'm W. Pugh nor for the waiver of protest written on the note; that the note and endorsement could not be admitted without proof. We think none of these grounds of defence can avail the defendant. The note was executed on the 12th April, 1863. On the 7th of October, 1869, the required stamp was affixed by the collector of U. S. revenue for the 2nd district of La., who endorsed thereon the words: "Penalty remitted, interest collected." No stamp was required for the endorsement nor for the waiver of protest. The defendant's answer admits the
25 signature of Martin, and his exception admits the endorsement.

We find no error in the judgment, and it is therefore ordered, adjudged, and decreed that the same be affirmed with costs in both courts.

Petition for rehearing.

Supreme court of La., on appeal from the 4th jud. district court of La. in and for the parish of Assumption.

JAMES L. McCORMICK
vs.
W'M W. PUGH. } No. 2611.

To the hon. the supreme court of the State of La., in session at the city of New Orleans:

The petition of W'm W. Pugh, defendant in the above-entitled suit, and appellant therein in this hon. court, from the judgment therein rendered in the district court for the parish of Assumption, respectfully sets forth that, on the 14th day of February, 1870, this honorable court rendered a decree in the above-entitled suit, ordering the judgment heretofore rendered in said suit in the lower court to be affirmed.

That your petitioner is entitled by law to ask for, and, on sufficient
26 grounds, to obtain a rehearing in this case; that the judgment of this hon. court, rendered on the 14th February, 1870, does great injury to your petitioner, and your petitioner *and* humbly assert it not to be in conformity to the law; that the judgment of the lower court should have been reversed and judgment given in favor of petitioner.

Petitioner alleges that it is the settled policy of this court, as expressed in numerous decisions for a long course of years, to adopt the construction placed by the various Departments of the United States Government upon the matters specially placed under their charge and control, and involving the construction of the United States laws; that this policy has been particularly shown in the matter of the public lands of the United States, and petitioner asserts that it is necessary so to do in order to ensure uniformity in the revenue laws throughout the whole country.

Petitioner represents that since this suit was submitted to this
27 court, he has obtained from the Internal Revenue Bureau, at Washington City, a decision upon some of the points made by him in this suit; that decision petitioner annexes hereto as part hereof. From it it will be preceived that the Commissioner decides that a note which has been issued unstamped cannot, after twelve months, be post-stamped, unless the penalty be paid; that this is a condition precedent upon which the post-stamping is dependent; therefore, as asserted by us in our bill of exeception, the facts and circumstances of this case did not authorize the collector to stamp; it was out of his power to post-stamp and remit the penalty. That this is so is patent on the face of the papers; for the collector, so far from collecting the penalty, expressly declares he remits it. The court therefore would, ex proprio motu, on having its attention directed to this fact, prevent the violation of a law of the United States; much more so should it act when we expressly make the point. The court will also notice that the commis-
28 sioner decides that each waiver of demand, protest, and notice of protest has to be separately stamped as a separate, distinct agreement, whether that waiver be on the back of the note or on another paper. This is what we contended for in the lower court, and what we now contend for in this court.

It will thus be perceived that the position taken by us in the lower court (with the single exception of the necessity of stamping the en-

dorsement) are sustained by the Internal Revenue Bureau. We respectfully urge upon the court to adopt the construction of the officers of the United States; should the court do so, it will at once see that McCormick is without any evidence to support his case, for neither the face of the note, nor the waiver, would be in evidence; but even if the face of the note were in evidence, McCormick, in the absence of legal proof of the waiver, would fail in his action, for he nowhere even alleges, much less proves, any demand, protest, or notice of protest to Pugh, and in the absence of this allegation and proof he necessarily fails.

It may, perhaps, be premature in a mere application for a rehear-
29 ing to urge the consequences which would flow in our favor from the decision of the points above referred to. Perhaps the proper time to do so would be on the final argument, if one be allowed us, but we may state that we think that something beyond a mere nonsuit or a mere remanding of the case would follow as a consequence. We will contend, and we think will show, on that argument that if a waiver be a new and distinct contract, that Pugh has been fully & completely discharged from all liability as endorser. We have shown enough for the present to make it apparent that the present judgment of this court is erroneous if this court adopts the decision of the Revenue Bureau, and that the case should be reopened for rehearing as to its final decision.

The errors complained of by the appellant are not susceptible of any rectification in behalf of appellee in this court. (C. P., 894–905; 5 N. S., 10; 21 An'l 354, 331, 479.)

In view of the premises, petitioner respectfully prays for a rehearing in this suit; that the present judgment be set aside and a new argument be permitted; that after due proceedings the judgment of the lower court be reversed and judgment rendered in favor of pe-
30 titioner. And as in duty bound & for general relief.

(Signed) NICHOLLS, LEBLANC & FOLSE,
Atty's for Pet'r.

Filed February 21st, 1870.
(Signed) M. P. JULIAN,
Dep'y Clerk.

Letter annexed to pet'n for rehearing.

Supreme court of La.

Filed February 21st, 1870.
(Signed) M. P. JULIAN,
Dep'y Clerk.

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE 2ND DISTRICT, LA.,
Baton Rouge, Feb'ry 7th, 1870.

SIR: I am directed by Commissioner Douglass to inform you, in reply to your letter to the Dep't of Treasury, that the penalty upon post-stamping a note cannot be remitted after twelve months from issue, but the collector can post-stamp it at any time, and is required to do so on payment of the penalty. Writing the name as endorser on the back is specially exempt from stamp duty. Any written waiver of demand, protest, notice, &c., &c., requires a five-cent stamp whether endorsed

or loose, it being a contract or form of agreement separated
31 from the note.

The penalty for neglect to affix the proper stamp is fifty dollars, and cannot be remitted after twelve months.

Resp'y yours,
(Signed) JOHN S. CHAPMAN,
Coll. 2nd Dist. La.

FRANCIS T. NICHOLLS, Esq're, *Napoleonville.*

Extract of minutes.—Rehearing refused.

Supreme court of La.

MONDAY, *March 7th*, 1870.

The court was duly opened, pursuant to adjournment. Present, their honors James G. Taliaferro, Rufus K. Howell, W. G. Wyly, W. W. Howe, associate justices. Absent, John T. Ludeling, chief justice.

JAMES L. McCORMICK } No. 2611.
vs.
W'M W. PUGH. }

It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.

Supreme court of La.

JAMES L. McCORMICK } No. 2611.
vs.
W'M W. PUGH. }

32 Petition for writ of error to the Supreme Court of the United States.

Filed March 16th, 1870.
(Signed) M. P. JULIAN,
Dep'y Clerk.

To the honorable the judges of the supreme court of the State of La.:

The petition of William W. Pugh, residing in the parish of Assumption, State of Louisiana, respectfully represents, that your honorable court has recently rendered a judgment in the suit in which your petitioner was defendant, and James L. McCormick, residing in the parish of Ascension, in said State, was plaintiff, and which said suit is number 2611 on the docket of this court; that the said judgment was rendered on Monday, the 14th day of February, 1870, and became final on the 7th day of March, 1870; that your petitioner is advised that there is error to his prejudice in the said judgment; that this court is the
33 highest court of law and equity in the State of Louisiana in which a decision can be had in the said suit; that in said suit is drawn in question the construction of a statute of the United States, and the decision is against the right, privilege, or exemption claimed by defendant under such statute; all of which appears on the face of the record of said suit, and that accordingly a writ of error lies from said final judgment to the honorable the Supreme Court of the United States.

Your petitioner further represents that he is advised that said writ of error will be a supercedeas, and stay execution, if a bond with good and sufficient security be given, in an amount sufficient to secure the whole amount of the said judgment, and according to law, and that petitioner, the plaintiff in error, shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, when the writ of error is served, by a copy thereof being lodged for the adverse party in the clerk's office, where the record remains, within ten
34 days, Sundays excluded, after rendering the said judgment.

Wherefore petitioner prays that a writ of error may be allowed to him, which shall be a supersedeas and stay execution; and that a citation be signed to be served on said James L. McCormick, the said defendant, according to law, and returnable to the Supreme Court of the United States, upon petitioner giving security as the law directs.

(Signed) MILES TAYLOR,
Attorney for petitioner.

Writ of error.

It is ordered that a writ of error be allowed as prayed for herein; and it is further ordered, that the said writ of error shall be a supersedeas, and stay execution on petitioner's giving bond with good and sufficient security in the sum of four thousand dollars, within the legal delay, and conditioned according to law.

(Original signed) JNO. T. LUDELING,
Chief Justice of the Supreme Court of Louisiana.

35 *Citation in error.*

Supreme court of La.

JAMES L. McCORMICK
vs.
WILLIAM W. PUGH. } No. 2611.

Filed March 16th, 1870.

(Signed) M. P. JULIAN.
Dep'y Clerk.

United States of America to James L. McCormick, residing in the parish of Ascension, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fifth day of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, holding sessions in the city of New Orleans, wherein William W. Pugh is plaintiff in error, and you are defendant in error, to shew cause if any there be, why the judgment rendered against the said plaintiff in error, as in said writ men-
36 tioned, should not be corrected, and why speedy justice should not be done the party in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this the 16th day of March, in the year of our Lord eighteen hundred and seventy.

(Signed) JOHN T. LUDELING,
Chief Justice Supreme Court of the State of Louisiana.

Bond.

Supreme court of La.

JAMES L. McCORMICK
vs.
W'M W. PUGH. } No. 2611.

Filed March 16th, 1870.

M. P. JULIAN,
Dep'y Clerk.

Know all men by these presents that William W. Pugh, as principal, and Robert L. Pugh, as security, are held and firmly bound unto James L. McCormick, in the full and just sum of six thousand dollars, to be paid to the said McCormick, his certain attorneys, executors, ad-
37 ministrators, and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Signed, sealed with our seals, and dated this 16th day of March, in the year of our Lord eighteen hundred and seventy.

Whereas lately, in the supreme court of the State of Louisiana, holding session in the city of New Orleans, in a suit depending in said supreme court, between William W. Pugh, appellant, and James L. McCormick, appellee, No. 2611 of the docket, judgment was rendered against the said W'm W. Pugh; and the said appellant, William W. Pugh, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to revise the judgment rendered in the aforesaid suit, and a citation directed to the aforesaid appellee, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

38 Now, the condition of the said obligation is such, that if the said William W. Pugh, shall prosecute his writ to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, otherwise to remain in full force.

(Signed) W'M W. PUGH. [SEAL.]
(Signed) R. LAWRENCE PUGH. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) MILES TAYLOR.
(Signed) W'M W. KING.

Approved by me as chief justice of the supreme court of Louisiana. New Orleans, 27th day of May, 1870.

(Signed) JNO. T. LUDELING,
Chief Justice Sup. Court of Louisiana.

Citation for service.

United States of America to James L. McCormick, residing in the parish of Ascension, Louisiana, greeting:

You are hereby cited and admonished to be and appear at a
39 Supreme Court of the United States, to be holden at Washington, on the fifth day of December, next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, holding

sessions in the city of New Orleans, wherein William W. Pugh is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the party in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 16th day of March, in the year of our Lord, eighteen hundred and seventy.

(Signed) JNO. T. LUDELING,
Chief Justice Supreme Court of the State of Louisiana.

A true copy:

40 [SEAL.] (Signed) T. McC. HYMAN,
Dep'y Clerk.

Sheriff's return.

Received the within citation of a writ of error, together with a copy of the same, on the 2nd day of July, 1870, and on the 6th day of the same month and year executed the same by serving a copy of the within citation on Dr. James L. M'Cormick, in person, at the town of Donaldsonville, he being personally known to me; whereof I make this my true return.

(Signed) THOMAS DUENO,
Sheriff Parish of Assumption.

CLERK'S OFFICE, 4TH JUD. DIST. COURT,
Parish of Assumption, July 7th, 1870.

Sworn to and subscribed before me.
[SEAL.] JOHN K. DUENO, *Clerk.*

41 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or one of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James L. McCormick and W'm W. Pugh, wherein was drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said W'm W. Pugh, as by his complaint appears;

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this

behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and, according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 11th day of July, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) Supreme court of La. No. 2611. James L. McCormick versus W'm W. Pugh. Writ of error. Miles Taylor, att'y for pl'ff in error. Sup. court of La.

Filed July 11th, 1870.

M. P. JULIAN,
Dep'y Clerk.

42 *Certificate of the dep'y clerk.*

United States of America, supreme court, E. D. State of Louisiana.

I, M. P. Julian, dep'y clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing forty-one pages contain a true copy of the transcript of the proceedings had in the fourth judicial district court, parish of Assumption, in a certain suit wherein James L. McCormick was plaintiff, and William W. Pugh was defendant, and also of the proceedings had in this supreme court on the appeal taken by said William W. Pugh, which appeal is now on the files thereof under No. 2611.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this the first day of July, anno Domini 1870, and in the ninety-fourth year of the independence of the U. S. of America.

[SEAL.] M. P. JULIAN,
Dep'y Clerk.

43 *Certificate of the chief justice.*

United States of America, supreme court of the State of Louisiana.

I, John T. Ludeling, chief justice of the supreme court of the State of La., do hereby certify that M. P. Julian is dep'y clerk of the supreme court; that the signature of M. P. Julian to the within certificate is in the proper handwriting of him, the said dep'y clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts, as such.

In testimony whereof I have hereunto set my hand and seal on this the 9th day of July, anno Domini eighteen hundred and seventy.

[SEAL.] JNO. T. LUDELING,
Chief Justice of the Supreme Court of Louisiana.

44 *Clerk's certificate.*

Supreme court of the State of La.

I, M. P. Julian, dep'y clerk supreme court of the State of La., do hereby certify that the Honorable Jno. T. Ludeling is, and was, at the time of signing the foregoing document, chief justice of our supreme court, and that the signature affixed to the same is in the proper handwriting of him, the said judge.

In faith whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 5th day of August, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] M. P. JULIAN, *Dep'y Clerk.*

(Indorsement on cover:) No. 296. William W. Pugh, plaintiff in error, vs. James L. McCormick. Louisiana supreme court. Filed 17th November, 1870.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1870.

WILLIAM W. PUGH,
PLAINTIFFS IN ERROR,
vs.
SAMUEL L. McCORMACK.
} *No.* 296.

In Error to the Supreme Court of the State of Louisiana.

BRIEF OF COUNSEL OF DEFENDANT IN ERROR.

Abstract.

In this case McCormack brought suit in the fourth judicial district court of the parish of Assumption, Louisiana, against the plaintiff in error, as endorser of a promissory note, made by R. C. Martin, in Assumption, Louisiana, on the 12th April, 1863, for the sum of seven thousand dollars, and payable twelve months after date.

Rec., p. 1.

There is an endorsement on the note signifying that the endorser, Pugh, had paid $2,000 on it before maturity, viz, on the 7th of December, 1863, (see Rec., p. 2;) and the petition alleged that he paid a further sum of $3,000 on account of the note on 17th May, 1869, which was after its maturity.

See Rec., p. 1.

On the 16th October, 1865, Pugh, the plaintiff in error, endorsed on the note this memorandum: "Notice of protest demurred and protest waived, and all legal responsibility assumed."

See Rec., p. 2.

The answer filed in the court of the first instance in Louisiana denied that the plaintiff acquired the note sued on from defendant, but from Robert C. Martin, who signed the same; he denies consideration between himself and the plaintiff, or between himself, defendant, and Robert C. Martin; denies that he was ever legally bound upon the note, or that he ever rendered himself liable upon it.

See Rec., p. 4.

There was judgment for plaintiff.

See Rec., p. 7.

After judgment against Pugh in the district court, he appealed to the supreme court of Louisiana, (see Rec., p. 8,) where the judgment of the lower court was affirmed against him, (see Rec., p. 11,) and he has obtained a writ of error to transfer the cause from the said supreme court of Louisiana to the Supreme Court of the United States, under the twenty-fifth section of the act of September 24, 1789. (1 U. S. Stat. at Large, pp. 85 and 86, and 14 Stat. at Large, pp. 386–7.)

See Record, pp. 14 and 15.

The points decided by the supreme court of Louisiana were:

First. That although the note was originally issued without a stamp, yet it was, nevertheless, properly received in evidence, because on the 7th October, 1869, the proper internal revenue stamp had been affixed by John

S. Chapman, collector of U. S. internal revenue for the second district of Louisiana.

SECOND. That no stamp was required by law to the waiver on the back of the note, made by Pugh, of notice of protest, demand, and protest, he assuming all legal responsibilities.

See Rec., p. 11.

In the court of the first instance, the defendant there, McCormack, the plaintiff in error here, took a bill of exceptions to the introduction of the note sued on, in evidence on the ground, first, because the face of the instrument was not legally stamped, and second, that the waiver of demand, protest, and notice was not stamped.

See the objections on file in bill of exceptions, Rec., p. 6.

The court of the first instance ruled that as the instrument was stamped by John B. Chapman, collector of the second district, on the 7th October, 1869, this was sufficient to authorize the admission of the note in evidence; and that as to the waiver, no stamp was required.

See Rec., p. 6.

These views were sustained by the supreme court of Louisiana.

See Rec., p. 11.

The counsel of defendant in error, McCormack, submits the following points:

FIRST. The sixteenth section of the act of March 3, 1863, (12 U. S. Statutes at Large, pp. 724 and 725,) expressly provides that the stamp showing payment of internal revenue tax may be affixed in court in all cases where the note was made before the 1st June, 1863.

See Shay *vs.* Henk, 49 Pennsylvania, p. 83.
See Day *vs.* Baker, 36 Mo., 125.

And the law covers the case completely, as the note sued on was made before the 1st June, 1863, viz: on the 12th of April of that year. (See Rec., p. 2.) It was, therefore, the privilege of the party presenting the note in court as evidence to affix the stamp at the time of offering it, and had he pursued that course the court would have been bound in law to receive the note in evidence, so far as want of stamp at the date of its issue was concerned.

Instead of pursuing this course, the plaintiff, in the State district court, resorted to the collector of U. S. internal revenue in the district, to whom he paid the duty prescribed by law, and who affixed the proper stamp to the note.

To this the defendant objected, that the collector, having remitted a penalty alleged to be due for the neglect of affixing stamps at the date of issuing the note, had, by this remission, rendered null and void the stamp affixed, since, it was said, the collector was authorized by law to remit the penalty only within twelve months after the issuing of the note; that more than twelve months had elapsed; and that the application and remission of the penalty within twelve months being a condition precedent to the right of the collector to affix a stamp, his act, in doing so subsequently, was a nullity, and did not make the note a legal instrument of evidence.

It is manifest that such objections are perfectly futile, as the plaintiff had a right to fix the stamp up to the moment of time he offered the note in court; and in presence of such a legal right, the judge, finding the note stamped when presented to him as proof, could not go behind that fact, which was conclusive upon his judgment, or could only look at what had been done by the plaintiff and the

collector as works of supererogation, of no importance, and not to be considered.

Corbin *vs.* Tracy, 34 Conn., 325.
Cooke *vs.* England, 27 Maryland, 14.
Dowler *vs.* Cushwa, 27 Maryland, 354.
Patterson *vs.* Evans, 54 Maine, p. 203.
Tobey *vs.* Chipman, 13 Allen, (Mass.,) 123.

But suppose the case had been otherwise. Admit that it was necessary for the holder of the note to go to the collector to have the stamp affixed, what then would be the law applicable to the case?

The act of March 3, 1865, (13 Statutes at Large, p. 481,) says: "That hereafter, in all cases where the party has not affixed to any instrument, as required by the 151st section of the act of June 30, 1864, the stamp thereby required at the time of making or issuing, and he or any party having an interest shall be subsequently desirous of affixing said stamp, he shall appear before the collector of revenue of the proper district, who shall, upon the payment of the price of the proper stamp and of a penalty of $50, affix the proper stamp to such instrument or note, and such instrument or note shall thereupon be deemed and held to be as valid to all intents and purposes as if stamped when made or issued: *Provided*, That when it shall appear to said collector, upon oath or otherwise to his satisfaction, that any such instrument has not been duly stamped at the time of making or issuing the same by reason of accident, mistake, inadvertence, or urgent necessity, and without any wilful design to defraud the United States of the stamp duty, or to evade or delay the payment thereof, then and in such case, if such instrument shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of revenue to be stamped, and the stamp

duly paid, it shall be lawful for the said collector to remit the penalty and to cause such instrument to be duly stamped."

The act of 13th July, 1866, (14 Statutes at Large, p. 142,) contains substantially the same provisions as that of 1865, extending, however, the time in which the collector may remit to twelve months beyond 1st August, 1866.

It will be seen that the collector of internal revenue is here clothed with discretionary power to examine into the facts, and when the innocence of the act of omission in not affixing stamps is proved to his satisfaction he may remit the penalty. It is a principle of law too well established to be shaken that when extraordinary authority is vested in an officer to act on his judgment and discretion, his decision is conclusive and final, and cannot be reviewed by any other officer or power, and is not subject to appeal, unless an appeal has been allowed by the express terms of the law granting the power to hear and determine, and no such right of appeal is granted from the decision of the Collector; his decision is binding on all the world. On this point see—

Barnard's Heirs *vs.* Ashley's Heirs, 18 Howard, pp. 44 to 46.

Spratt *vs.* Spratt, 4 Peters, p. 393.

Durosseau *vs.* The United States, 6 Cranch, p. 307.

If it should be suggested that the statute only allows the collector to remit the penalty within one year after the date of the note, or one year after the 1st August, 1866, the reply is that the objection involves only the question of the remission of the penalty, which arises solely between the collector and the Government; but the question is really one of evidence; when a note is presented to a court with a proper stamp upon it, the court cannot turn aside to examine into the conduct of the offi-

cer who is the party to the suit. If the Government does not complain of the remission of the penalty, no one else can.

SECOND. Did the waiver on the back of the note require a stamp?

In the law of bills of exchange and promissory notes, the endorser undertakes to pay the amount of the note if, when presented at maturity to the maker and payment demanded, the maker fails to pay, and due notice of such failure is given to the endorser. It is not necessary that the demand on the drawer should be made by a notary, or that a protest by a notary should be made on default of payment, or that a notice of such default should be made by a notary. No particular form of notice is required. It may be written or verbal.

See Byles on Bills, by Sharswood, 1853, p. 213.

The question, therefore, is one of evidence. It must be proved on trial that notice of the drawer's default was given in due time to endorser. If that be proved, he is bound. Being a mere question of evidence, it is not an agreement within the meaning of the stamp act.

Had no written waiver appeared on the back of the bill it might have occurred that when plaintiff's counsel offered it in evidence defendant might have said, "I admit I was notified of demand on and default of payment by the drawer." This admission would have supplied, it is clear, the place of the most formal proofs, and, as is equally clear, such an admission could have required no stamp, not being susceptible of any, as not being in writing; but if reduced to writing its nature would not have been changed. It would still have been an admission, and not an agreement in the meaning of the stamp act.

It has been held always that waiver of notice was

equivalent to notice, and is properly provable under the allegation of actual notice.

See Taunton Bank *vs.* Richardson, 5 Pickering, p. 444.

Hence the waiver was merely an admission that notice had been given ; it need not have been in writing ; as the notice needed not to be in writing both might have been verbal, and of course from their nature neither required a stamp.

This point came up before the supreme court of California, and the court said :

"The waiver of presentation, demand, notice of non-payment, and protest was not a contract within the meaning of the laws of the United States. The statute requires a promissory note to be stamped ; but so far as we have been able to discover there is no provision requiring *a transfer* of a promissory note to be stamped. The contract between the plaintiff and defendant related to the transfer of the note in suit, and the nature of the transaction, in view of the transaction, in view of the stamp act, is unaffected by the mere terms in which the transfer is made."

Pacific Bank *vs.* De. Ro., 37 California, pp. 542 and 543.

Respectfully submitted.

THOMAS J. DURANT,

For McCormack, Defendant in Error.

In the Supreme Court

OF THE UNITED STATES.

WILLIAM W. PUGH, PLAINTIFF IN ERROR,

vs.

JAMES L. McCORMICK.

BRIEF FOR THE PLAINTIFF IN ERROR.

MILES TAYLOR,
Of Counsel.

In the Supreme Court

OF THE UNITED STATES.

WILLIAM W. PUGH, PLAINTIFF IN ERROR,

vs.

JAMES L. McCORMICK.

BRIEF FOR THE PLAINTIFF IN ERROR.

MILES TAYLOR,
Of Counsel.

In the Supreme Court

OF THE UNITED STATES

In the Supreme Court

OF THE UNITED STATES.

WILLIAM W. PUGH, PLAINTIFF IN ERROR,

vs.

JAMES L. McCORMICK.

BRIEF FOR THE PLAINTIFF IN ERROR.

A promissory note was executed on the 12th of April, 1863, by R. C. Martin, in which he promised to pay, twelve months after date, to the order of Wm. W. Pugh, at the counting house of Foley, Avery & Co., in New Orleans, seven thousand dollars, with interest thereon at eight per cent. Wm. W. Pugh endorsed this note for the accommodation of the maker. Rec. 2, 6.

The note, when it arrived at maturity, was not protested for non-payment. In consequence of this failure

to protest it, and give legal notice of the protest to Wm. W. Pugh, the endorser, he was released from all liability on the note in his capacity of endorser.

On the 16th of October, 1865, Wm. W. Pugh wrote upon the note the following words: "Notice of protest, demand and protest, waived, and all legal responsibilities assumed," and signed the same. Rec. 2. Various payments were made upon the note, leaving a balance of $2544 35, with interest at eight per cent per annum from the 17th of May, 1864, due thereon.

On the 7th of October, 1869, James L. McCormick, the holder of the note, applied to a collector of the Internal Revenue of the United States to have Internal Revenue stamps affixed to the note; and the collector affixed Internal Revenue stamps to the same, and cancelled them, and remitted the penalty for a failure to affix them before. Rec. 2. Previous to this, no stamps had been affixed to the instrument.

Before the affixing of revenue stamps to the amount of $3 50 to the note, an action had been brought upon it by James L. McCormick, against Wm. W. Pugh, the endorser. Upon the trial of the cause, the then defendant, now the plaintiff in error, objected to the introduction of the note in evidence, and of the waiver of the protest, and the assumption of "all legal responsibilities," made in writing by him on the 16th of October, 1865, on the ground that the same could not be lawfully received as evidence in the cause, inasmuch as the In-

ternal Revenue stamps, required by law to be affixed to the contract contained in the promissory note sued on, and to the contract waiving protest and notice of protest, made October 16th, 1865, had not been affixed as required by law. The objection of the plaintiff in error was overruled, and the note and the writing making the waiver of protest, and of notice of protest, and assuming legal responsibilities, &c.. were received in evidence. To the decision of the court overruliug the objection the plaintiff in error excepted, and his bill of exception was duly signed. Rec. 6, 7.

After receiving this evidence, the court of the first instance gave judgment for the amount remaining due on the note. From this judgment an appeal was taken to the Supreme Court of the State of Louisiana ; and upon the hearing of the case by that court the judgment was affirmed. A writ of error was then applied for, on the ground that in the suit was drawn in question the construction of a statute of the United States, and that the decision given was against the right, privilege, or exemption, claimed by the defendant under such statute. This writ was allowed by the Chief Justice of the Supreme Court of Louisiana, and the case is now before this court upon that writ of error.

The plaintiff in error allege that the objections made by him, in the Court of the first instance, to the introduction of the note in question, and of the writing, showing the waiver of protest and notice, and the assumption

of legal responsibilities by him, etc., made on the 16th of October, 1865, were improperly overruled, because :—

First—It was not shown that the said James L. McCormick had paid the penalty of fifty dollars imposed by the act of Congress in such cases at the time of affixing the stamps for $3 50c on the said 16th day of October, 1865, by a note made on the margin of the said note, by the proper officer, and

Second—Because it was not shown that any stamp whatever had been affixed to the written instrument containing the contract, entered into on the 16th day of Oct., 1865, by which the defendant below had waived the protest and notice of protest of the note, and had assumed all legal responsibilities for the same.

I. By the laws of the United States in force in relation to stamp duties, it was required that all promissory notes and agreements or contracts, should have stamps of certain specified amounts affixed to them; and to insure the payment of the stamp duties, it was specially provided that no instrument, document, or paper required by law to be stamped, should have legal force or effect until the proper stamps had been affixed; and that so long as the proper stamps had not been affixed, they should "be utterly void, and shall not be used in evidence."—(Sec. 152 of the act of Congress, approved, June 30th, 1864—(13 U. S. at Large, 272.) The note in this case had been executed sometime

before the passage of that act; and the act, in sec. 163, with reference to such cases, provided for the proper stamps being affixed. when the promissory note or agreement was to be used in evidence, in the presence of the Court. But before any stamp was affixed to the note, the act approved, July 13th, 1866, —(14 U. S. Statutes at large, 142) was passed. By this act, the law bearing on this subject was materially changed. Sec. 158 of the act of 1864, was amended so as to provide, that thereafter "in all cases where the party" had "not affixed to any instrument the stamp required by law thereon, at the time of making or issuing the said instrument, and he or they, or any party having an interest therein, shall be subsequently desirious of affixing such stamp to said instrument," "he or they shall appear before the collector of the revenue of such district, *who shall upon the payment of the price of the proper stamp required by law, and of a penalty of fifty dollars*," "affix the stamp to such instrument, and note upon the margin thereof, the date of his so doing, and the fact that such penalty had been paid." etc. And this provision was the only one in force after the passage of the act of 1866, inasmuch as that act repealed the provision befors referred to, as contained in sec. 163 of the act of 1864.

In the present case no penalty, as required by law, was paid. The note made by the collector was not in conformity with the provisions of the act of 1866, and

the instrument was, in consequence, inadmissible in evidence in a court of justice.

II. The writing upon the note, signed by the defendant in the court of the first instance, by which he waived a protest, and notice of protest on the note, and assumed all legal responsibilities with respect to it, was a separate and distinct contract or agreement. Upon this contract or agreement a stamp, of some amount, was required by law, as much as upon the note itself. But no stamp of any amount was ever affixed to it. This writing, then, was inadmissible in evidence, and ought to have been excluded by the Court of the first instance.

The right of the United States to impose stamp duties will not, we presume, be denied. If the right exists to impose stamp duties, it is obvious that the only convenient and practical manner of enforcing their payment is to deprive all instruments upon which they are reduired to be affixed, of all binding force and effect, and to exclude them from introduction in evidence, until the stamp duties to be paid upon them are actually paid, and in the manner prescribed by law. If this be true, it necessarily follows that the objections of the plaintiff in error to the introduction, both of the note and of the writing containing the waiver of protest, and of notice of protest, were well taken, an ought to have been sustained.

If we are right in both of the positions we have as-

sumed, the judgment in the cause should be reversed. And it is equally true that the judgment ought to be reversed if we are right in only one of them—viz.: as to the inadmissibility of the writing containing the waiver made by the plaintiff in error, of the protest and notice of protest of the note. This will be at once apparent when it is remembered that the plaintiff in error is sued as the endorser of the note, and that the note was never protested for non-payment.

All of which is respectfully submitted,

MILES TAYLOR,

Of Counsel.